b) Direct downlinks to other countries will offer U.S. programmers an additional opportunity to export their programming. U.S. programming is in demand all over the world, but many countries have a limited cable infrastructure and limited DBS capacity. Thus a relatively modest capital investment in satellite capacity can help to expand U.S. international trade in programming and other software.

c) By importing programming from the home countries of U.S. ethnic groups, DBSC can better serve its U.S. subscribers, and can help foster multilateral trade in programming, thus benefiting foreign programmers as well.

d) By building a foreign subscribership on a solid base of U.S. subscribers, DBSC can make it much more practical to bring DBS service to other countries that may not themselves have a large enough subscriber base to make a dedicated DBS satellite practical.

DBSC's construction permit requires that its first satellite be in service by August of 1995. DBSC plans to file a timely request to extend the construction deadline.[7] In January of this year it submitted to the Commission a technical showing as requested by the staff, to demonstrate that its system will comply with the requirements for the Region Two plan of the Radio Regulations (Appendix 30). At the same time it asked for grant of an unconditional permit and for launch authority. The Commission has not yet acted on the request. DBSC currently expects to launch its first satellite in 1998.

It is apparent that in 1998 DBSC will enter a market which by then will already include numerous capable operators. DBSC respects the financial resources, business and technical skills of its competitors and recognizes that as a start-up entity and the fourth or fifth entrant into the DBS market it must bring something special to the public It is in this context, i.e.,

---

[7] DBSC waited from April of 1990, when it filed its due diligence showing, to November of 1993 to receive approval. To its knowledge, these delays were in no measure attributable to any shortcoming in DBSC's filings with the Commission but rather to processing delays within the Commission.

that of a vigorously competitive market, that DBSC seeks authority to add international service to its existing authorization.

II. Precedent

A. DBS

From the beginning, the Commission designed the DBS service rules to be flexible: "In the Notice, we stated that our basic policy for DBS should be to maintain an open and flexible approach that will allow the business judgements [sic] of the individual applicants to shape the character of the services offered. We stated that such an open skies policy would encourage the submission of a wide variety of proposals and thereby achieve the full benefits of experimentation with this new service." Direct Broadcast Satellites, supra, 90 FCC 2d at 698.

In recent years the Commission has, on a number of occasions, considered how best to put the DBS spectrum to use and in doing so has reemphasized its flexibility with respect to potential uses. See, e.g., United States Satellite Broadcasting Co., Inc., 1 FCC Rcd 977, 978 (1986), recon. den. 2 FCC Rcd 3642 (1987), in which the Commission granted a request from USSB to provide a form of FSS service on its DBS spacecraft for an interim period consisting of the first license term and up to 50% of transponder capacity for the remaining life of the first generation spacecraft:

> Accordingly, the clarification rendered here will permit the maximum allowable usage of the DBS allocation consonant with the DBS allocation decision, and non-conforming uses which do not detract from the goal of introducing DBS service, and which may help to advance it, will be permitted to an extent which can be expected to help develop a DBS operator's service.

The Commission further noted:

> An assessment of the propriety of continuing to permit some degree of non-conforming use of DBS satellites during future generations can be made under the circumstances prevailing at that time. These restrictions should leave ample opportunity for DBS operators to utilize FSS services on an ancillary basis, if necessary, to foster their development of DBS services.[8]

(Footnote omitted) USSB, Id. at 979. See also CBS, 92 FCC 2d 64, 68 (1982) (Commission generally allows non-conforming uses but only if they are secondary to the primary authorization).

As the orbit/spectrum resource becomes more and more precious, there is a correlative obligation both on the Commission and on its licensees to make intensive and efficient use of the resource. See, e.g., Potential Uses of Certain Orbital Allocations by Operators In The DBS Service (NPRM), 4 FCC Rcd 6306, 6307 (1989) ("We have often emphasized the desirability of encouraging licensees to increase the intensity and efficiency of their use of spectrum by finding new and additional uses of that spectrum." After reciting its support for the provision of secondary or subsidiary services by radio and television stations and by ITFS licensees, the Commission noted that in authorizing such secondary uses of spectrum "we have attempted to minimize the additional regulatory requirements and we propose to apply [a] similar analysis to DBS licensees' use of orbital locations." Id. As demonstrated above, the instant proposal would increase orbit/spectrum use by authorizing the use of transponder capacity which would otherwise be left unused. Indirectly it also enhances

---

[8] The Commission reaffirmed this non-conforming use policy in 1991 in Potential Uses of Certain Orbital Allocations By Operators In The DBS Service (Report and Order), 6 FCC Rcd 2581 (1991). In that proceeding, the Commission declined to expand the authority for non-conforming uses established in the USSB decision but indicated also that its policy in this respect was subject to revision as appropriate. Id. at 2583.

spectrum use by accelerating and broadening the opportunity for a permittee to initiate service to the public.

Throughout its administration of the DBS service, the Commission has emphasized both the need to assure equitable treatment of all DBS applicants or permittees, and the desirability of looking at individual circumstances. See Processing of DBS Applications, 95 FCC 2d 250 (1983) and CBS, Inc., 98 FCC 2d 1056, 1059 (1984). As the Commission noted in the latter proceeding approving a proposed alteration in orbit/spectrum assignment to a DBS permittee: "The Commission recognizes the rapid evolution in this fledgling industry, as well as the need for operators to develop and maintain competitive systems." Id. It further relied there on the fact that the requested change would provide "significant enhancement of the opportunity for this permittee to provide a greater degree of diversity of programming. Finally, the viability of the first DBS systems is critical to the success of the service, and this change will contribute to, and may well be essential to, that viability." Id. at 1059-1060.

Five years later, in Continental Satellite Corp., 4 FCC Rcd 6292 (1989), Commissioner Dennis in a concurring statement noted that the cost of providing DBS service is high and its prospects uncertain. "Our DBS policies seek to provide incentives to make the high capital investments required to introduce service." Id. at 6302. Of course, today another five years have elapsed. Nevertheless, development of DBS has been delayed far longer than generally anticipated and its commercial success is still an open issue. Certainly for DBSC, which was delayed more than three years in its development by processing constraints at the Commission while other permittees were able to proceed with their

plans, the equities strongly favor promptly permitting the enhanced authority which it seeks.

B. Other Satellite Services

For well over a decade the Commission has consistently followed an innovative, flexible, and pro-competitive policy in the regulation of satellite services. In Domestic Fixed-Satellite Transponder Sales, 90 FCC 2d 1238 (1982), affirmed sub nom. Wold Communications Inc. v. FCC, 735 F.2d 1465 (D.C. Cir. 1984), the Commission authorized the sale of transponders on domestic satellites. It found that such sales would allow more efficient usage of orbit and spectrum resources, would provide means for would-be operators to raise the necessary capital to enter the market, would provide a mechanism for gauging demand, and would facilitate risk sharing. Sellers would have an incentive to innovate by designing systems to fit particular users' needs and buyers could plan ahead with assurance that desired satellite capacity would be available to them at a set price when needed. Sales transactions could be structured to meet specific needs of particular satellite operators and end users, and operators, through their selection of purchasers, could take advantage of complementarities among users. 90 FCC 2d at 1251-1252 (par's. 33-34).

In the analogous area of international fixed satellite service, the Commission has demonstrated its readiness to adopt new and precedent-setting approaches to stimulating new competitive opportunities. Separate Systems Policy, 101 FCC 2d 1046 (1985), recon. 1 FCC Rcd 439 (1986), 7 FCC Rcd 2313 (1992). Although the circumstances of the Separate Systems Policy and the instant request are different in certain respects, there is an underlying similarity. In both cases the rationale for modifying

existing policy is that entrepreneurial competitive entry is one of the most powerful ways to drive prices to cost and to assure innovation and efficiency. Separate Systems, 101 FCC 2d at 1177. In Columbia Communications Corp., 7 FCC Rcd 122 (1991), the Commission waived a number of existing policy restrictions, including a processing freeze and a full frequency reuse requirement, to allow the applicant to put to commercial use otherwise idle C Band facilities in two in-orbit TDRSS spacecraft.

Extending over a period of many years, the Commission has permitted Domsat licensees to provide a variety of services internationally, principally to Central and South America. See, e.g., Transborder Satellite Video Services, 88 FCC 2d 258, 280 (1981); Teleport International Ltd., 1 FCC Rcd 101 (1986), remanded sub nom. Communications Satellite Corp. v. FCC, 836 F.2d 623 (D.C. Cir. 1988). Use of U.S. and Canadian Domsats for Canadian/U.S. service has also been approved. See, e.g., Satellite Business Systems, 88 FCC 2d 195 (1981); GTE Spacenet Corp. (Recon.), 4 FCC Rcd 2071 (1989). The so-called Transborder policy in fact is very broad. "[It] involves service incidental to the natural footprint of the satellite. Thus, within the natural footprint of a domestic satellite a full range of transborder services is possible." Id. at 2074.[9] There is

---

[9] While these precedents squarely support the expansion of its DBS authorization which DBSC seeks, they in no way require DBSC to comply with their constraints. The limitations of the Transborder policy premised on Article XIV(d) of the INTELSAT Agreements are inapplicable because DBSC does not come within the ambit of INTELSAT's offerings. Article I(l) of the INTELSAT Intergovernmental Agreement, 23 U.S.T. 3813, 3853, TIAS 7532, defines specialized communications services to include, inter alia, broadcasting satellite service for reception by the general public. As a "specialized service" broadcasting satellite service is not subject to the economic coordination requirement set forth in Article XIV(d) of the Agreement. See INTELSAT Legal Opinion,

(continued...)

precedent for approval of foreign (as contrasted with international) service on U.S. facilities initially authorized for domestic purposes. In Western Union Telegraph Co. (Intra-Caribbean Westar Authorization), 60 RR 2d 1659 (1986), the Commission allowed Western Union to provide service on its Westar Domsat system from Aruba to various Caribbean points. In doing so, the Commission found that such service was in the public interest because it would "contribute to the creation of new business and trade opportunities as well as the effective use of orbit resources." Id. at 1661.[10] And in RCA Communications, 101 FCC 2d 1342 (1985), the Commission granted RCA's request to use on-board switching of an already authorized Domsat for video signal distribution internationally.

More recently, as the Commission recognized in TRW, Inc., 8 FCC Rcd 6650 (1993), in which an FSS permittee was allowed to offer high power video distribution service from 172° W.L. in the C and Ku bands, some measure of flexibility with respect to orbit/spectrum use is desirable. As stated in the TRW decision, the Commission agreed to waive a frequency reuse obligation

---

[9](...continued)
reprinted in Hearings Before The Subcommittee On Oversight and Investigations, Committee On Energy And Commerce, House of Representatives, 98th Congress, Serial No. 98-190 (1984), pp. 620-624. The Commission's Separate Systems policy is also inapplicable for the same reason as well as because DBSC has a domestic authorization. See Comsat v. FCC, 836 F.2d at 627; Foreign Relations Authorization Act, Pub. L. 99-93 Sec. 146(g), 99 Stat. 405, 425-6 (1985), Sec. 146(g). Even if the Separate Systems policy were applicable, no economic coordination with INTELSAT would be required because DBSC does not seek authority to provide any interconnected services.

[10] Because the Western Union proposal involved no service to or from a U.S. point, the Commission held that no U.S. involvement in the INTELSAT Article XIV(d) coordination procedure was required; all that the U.S. carrier had to do was to coordinate informally on technical details with U.S. Domsat licensees and wait for the relevant foreign administration(s) to secure Article XIV(d) approval.

because the "separate systems industry is not well established and a waiver would serve as a means of encouraging industry growth." Id. at 6652. Currently pending before the Commission is a request filed by Hughes Communications Galaxy, Inc. ("HCG") to modify its Galaxy III(H) domestic communication satellite to permit optional service to Mexico, the Caribbean and Central and South America using Ku band frequencies. In its application HCG notes that a "unique" market opportunity now exists for international satellite service within the Latin American region.[11] PanAmSat has also recently filed applications for two additional satellites. PAS-8 is to be dedicated to direct-to-home (DTH) service in Latin America; PAS-9 will provide supplemental services for North and South America. Columbia Communications Corporation, holder of a separate system license, has also sought FCC permission to broaden its authorization to include the provision of domestic service on the NASA TDRSS satellites it is licensed to operate. As in the case of Hughes and PanAmSat, Columbia cites the artificiality of limiting its service to international points when it is capable of providing domestic service as well.

The merits of the pending HCG, PanAmSat and Columbia applications are not germane here. Clearly, however, there exists a widespread perception that regulatory distinctions between domestic and international service are increasingly arbitrary, and that U.S. domestic and internationally oriented satellite systems can find markets in the southern hemisphere of ITU Region Two.

---

[11] HCG also has pending a section 319(d) request to make the modifications subject to subsequent FCC approval, a request which PanAmSat has opposed on policy grounds.

III. Provision of International Service

What DBSC seeks herein is authority to use the spare capacity on each of its two authorized spacecraft to provide DBS service to, from, or within, foreign countries.[12] The two spacecraft for which DBSC has contracted with Martin Marietta Astro Space will carry 16 transponders each whereas DBSC is assigned only 11 channels at each orbital location.[13] Satellite design and construction costs are such that a reduction of space segment capability to 11 transponders is highly inefficient on a per transponder basis and could even involve a net increase in the cost of the satellites. Accordingly, unless a use can be found for the five extra transponders they will essentially go to waste. Most importantly, DBSC does not seek the reallocation of any of its originally authorized 11 DBS channels from domestic to international service. On the contrary, the proposal contained herein is to use satellite capacity and orbit/spectrum resources which would otherwise lie fallow, and to do so in a fashion which is completely consistent with all international obligations of the U.S. Compare International Satellite Systems (Recon.), 61

---

[12] To the extent the provision of such service involves U.S. uplink or downlink authority, FCC jurisdiction is indisputable. The provision of space segment for, e.g., Peruvian domestic service is another matter. As in the case of a purely foreign satellite system, such as Morelos, no FCC authority is required. Nevertheless, given the variety of opportunities for which DBSC seeks Commission approval, no jurisdictional issues are raised herein. By failing to raise them, however, DBSC does not waive the right to contend later that the Commission may lack jurisdiction over one or more elements of the present proposal.

[13] On May 24, 1994, DBSC opposed, in part, a request of Continental Satellite Corporation for assignment to it of two channels at 61.5° W.L. beyond the 11 it currently seeks. DBSC noted that it is eager to have additional channels assigned to it at 61.5° W.L. and that Commission policy requires that any such reallocation must be fair to all permittees. On May 26, 1994, the Continental request was denied on procedural grounds. Letter of July 6, 1994 to DBSC.

RR2d 649, 666-667 (1986), in which the Commission permitted a separate systems operator to use its satellite to provide domestic service ancillary to its authorized international services.[14]

A. Provision Of International Service As Incremental To Domestic DBS Would Serve The Public Interest

Section 100.3 of the Commission's rules, which defines DBS service, has no language limiting DBS to domestic use. DBSC does recognize that such a limit has always been part of the Commission's intentions.[15] The world, however, has changed dramatically since 1982 as the Commission itself has recognized by reorganizing its staff to create an International Satellite office and an office of International Affairs. Indeed, as far back as 1982 the Chairman of the FCC foresaw the internationalization of DBS: "DBS can be a powerful tool both domestically and internationally. Of course, DBS is intended to serve the contiguous United States but a worldwide system of orbs linking all people and all lands is not beyond the power of DBS." DBS, 90 FCC 2d 676, 728 (1982) (Chairman Fowler concurring.) The enormous economic and cultural potential for internationalization of television programming is already well established in the FSS bands. The relevance of DBS program delivery is as current as the recent NCTA convention at which the possible reliance of U.S.

---

[14] "Deviations from the guidelines...of RARC-83 may be permitted with Commission approval provided they do not cause interference to operational or planned systems of other administrations in excess of that specified in the Final Acts of the...RARC-83." Direct Broadcast Satellite Service, 90 FCC 2d at 718.

[15] Of course, DBS systems have been authorized by other countries and are fully recognized in the relevant ITU regulations. See DBS Systems, 92 FCC 2d 64, 65 n. 1 (1982) where the Commission distinguishes between "DBS" for domestic matters and "BSS" for international ones.

programmers on DBS technology (among others) for delivery in other countries was the subject of a panel discussion.[16] There is nothing in the Region Two plans adopted at WARC-79 or RARC-83 which compel the U.S. to restrict its DBS operators to domestic service. See, generally, Regulatory Policy Regarding the Direct Broadcast Satellite Service, 94 FCC 2d 741, 744, 752 (1983).

As proposed herein, the addition of international service to DBSC's authorized services would serve the public interest in a wide variety of ways. In essence it would permit DBSC to put to fuller use orbital locations which from a purely domestic viewpoint are less than ideal. By doing so, DBSC could offer the U.S. public programming opportunities, and the U.S. programmers marketing opportunities, which would otherwise not exist, or which at the least would be more cumbersome using low power space segment. An Executive Branch White Paper prepared in 1984 to support a U.S. government policy favoring separate satellite systems emphasizes the importance of international communications services to the U.S. balance of trade. See International Communications, 101 FCC 2d 1046, 1069 and n. 33 (1985). The Commission continues to emphasize the importance of international telecom markets, and U.S. participation in them. In recent Congressional testimony Chairman Hundt noted, inter alia, that "[t]he Commission's actions in the international area are intended to fuel U.S. economic growth through the creation of new businesses abroad for U.S. companies by promoting worldwide development of new wireless technologies and infrastructure development. We are encouraging the licensing of United States

---

[16] Communications Daily, Vol. 14 No. 103 (May 27, 1994), p. 2 ("Significant and profound sea change [in programming opportunities] in Third World, especially Asia" says spokesman for HBO Asia).

service providers in overseas markets and promoting private investment, competition, and regulatory reform both in developed and developing countries."[17] Indeed, at the conclusion of the recent G-7 Meeting attended by President Clinton an official communique was issued announcing a future meeting of the G-7 countries to stimulate the development of telecommunications among all nations.[18] And a U.S. trade mission to South America led by Commerce Secretary Brown probed further opportunities for U.S. telecom companies in that part of the world.[19]

By partially orienting its space segment facilities toward serving foreign, non-English speaking markets, DBSC would have a unique opportunity to build an economic base for emphasizing service to the presently underserved ethnic populations in the U.S. itself. Allocation of production costs between the two markets and the use for U.S. subscribers of foreign program sources oriented toward foreign language programming will enhance DBSC's ability to serve these groups. According to census data, in 1993 Asian/Pacific Islanders accounted for 3.4% of the U.S. population and those of Hispanic origin were almost 9.7%. Both percentages are expected to grow dramatically over the next 25 years.

---

[17] Statement of Reed E. Hundt, Chairman, FCC, before the Subcommittee on Commerce, Justice, State and the Judiciary, Committee on Appropriations, U.S. Senate, April 28, 1994, pp. 7-8.

[18] Wall Street Journal, July 7, 1994, p. 14.

[19] Communications Daily, Vol. 14, No. 122, June 24, 1994, p.4. Thereafter, the U.S. and Chile signed a Memorandum of Understanding regarding cooperation in the development of a global information infrastructure which has as one of its purposes the development of private sector and governmental cooperation in the telecommunications field.

The revenues generated by such service, in turn, could help to assure that DBSC will be a viable competitor to much larger and better established companies, thereby adding to the variety of competitive options open to the U.S. public. In its initial proposal to sell Domsat transponders on a non-common carrier basis, Hughes Communications, Inc. argued that as a new entrant in the competitive Domsat industry, it needed a marketing approach different from that of the established Domsat entities to establish itself. Transponder Sales, 90 FCC 2d at 1241 (par. 8). The same rationale applies today to DBSC.

Grant of the modified authorization sought herein by DBSC would also promote intermodal competitive fairness. As referenced above a number of FSS licensees are offering or planning to offer a DTH video distribution service which is different from DBS only in respect to the size and expense of the receive antenna. It appears that TRW, INTELSAT, PanAmSat and HCG propose to provide this "quasi-DBS" service internationally, with the latter three emphasizing service to Latin America. If the Commission accepts such uses for FSS authorizations, it is only appropriate for the Commission at the same time to facilitate fair competition for both domestic and foreign markets by allowing DBSC to expand the scope of its authorization to include service involving other countries.

DBSC's proposal would also permit fuller and more efficient use of the orbit/spectrum resources allocated to the U.S., a worthwhile goal in and of itself as the U.S. seeks to put before other administrations examples of efficient use of spectral resources. Without in any way denigrating the importance of the existing Region Two DBS Plan, it is conceivable that DBSC's initiative could lead to joint use of U.S. and/or other Region

Two DBS orbit/spectrum resources on the basis of joint and common investment, planning and use. Given the fact that little or no use of foreign DBS in Region Two allocations is imminent, a mutually agreed upon arrangement for such joint ownership and/or use may make excellent sense; Plan assignment coordination in the context of a specific, concrete construction project might maximize orbit/spectrum resource use to everyone's advantage.

Such innovative suggestions are not inimical in any way to the Region Two Plan's goals. On the contrary, Regional DBS systems are contemplated by the Plan. Moreover, given the dramatic advances in satellite design and the recent upsurge in interest in DBS, wireless cable, and other video distribution technologies both in the U.S. and abroad, the possibilities of flexible changes to the Region Two Plan suggested by this proposal could give renewed and extended life to the Plan, a Plan which might otherwise be a barrier rather than a facilitator of service to the public both in the U.S. and in other Region Two administrations.

B. From 61.5° W.L. DBSC Can Serve All Of Latin America And A Portion Of The European And African Landmasses

The 61.5° W.L. orbital location to which DBSC is assigned may or may not be ideal for full CONUS service. Although as a matter of law the Commission has pronounced all eight U.S. DBS orbital locations of the Region Two Plan equal in the regulatory context,[20] it is a matter of physical fact that from 61.5° W.L. elevation angles on the West Coast are not as high as they would be from 101° W.L., 110° W.L. or 119° W.L.[21] The unique virtue of

---

[20] 47 C.F.R. Section 100.13(b). See also cases collected in Continental, supra, 4 FCC Rcd at 6303 (n.13).

[21] Potential Uses of Certain Orbital Allocations By Operators In The DBS Service, 6 FCC Rcd 2581 (1991).

the 61.5° W.L. location, however, is that it is situated so far to the east that it provides excellent elevation angles from all of Central and South America and can even provide service to the westerly portions of the European and African landmasses. As Exhibit A hereto demonstrates, DBSC could serve as far east as western France, including all of England and the Iberian peninsula.

DBSC recognizes that other countries have rights to interference-free use of orbital locations in the vicinity of 61.5° W.L., and that the FCC cannot and should not authorize DBSC any use of channels at 61.5° W.L. which could interfere with the allocation of orbit/spectrum resources to others.[22] However, as Exhibit B demonstrates, there are at least some nations in Central and South America to which co-frequency transmissions from 61.5° W.L. would be possible without causing unacceptable interference as defined in the Region Two Plan. DBSC recognizes that for most of the relevant landmass such interference-free operation is not possible. Most importantly, DBSC would accept as a condition on any grant of international authority that no breach of international treaty obligations may occur in connection with the service for which authority is sought herein. The fact is, however, that the Region Two Plan in substantial part is devoted to modification procedures and standards; that to date little or no DBS activity has been notified to the ITU from non-U.S. Region Two administrations, and that the underlying purpose of regional planning is not to stifle but to stimulate equitable access to, and use of, orbital resources. It is also a fact that of the more than 90 million households in Latin

---

[22] See, e.g. CBS, Inc., 98 FCC 2d at 1061 n.12 (detailed technical data required to support DBS proposals not in conformity with the Region Two plan).

America, more than 69 million have TV service and fewer than 3 million, according to DBSC's market study, have satellite-based access to video programming. Plainly there is a large market to be served.

There are basically three configurations in which DBSC's space segment could be used to provide international service: (1) an uplinking of foreign programming for distribution to the U.S.[23]; (2) an uplinking of U.S. programming for distribution in a foreign country; and (3) both uplinking and downlinking in a foreign country i.e., foreign domestic service. DBSC has encountered potential interest internationally in all three. As noted earlier the U.S. has the fifth largest Spanish-speaking population in the world. There are many millions of U.S. residents whose native language is not English, and who DBSC believes would be able and willing to pay for programming coming from their country of birth or upbringing. Indeed, one of the unique advantages of DBS over both terrestrial television and cable is that a community of interest may be aggregated from all over the U.S., and indeed from other countries as well, of sufficient size to justify foreign language programming, even though in any one geographic region there may be only relatively few interested viewers. DBS, 90 FCC 2d at 714-715.[24]

---

[23] It is arguable that, provided DBSC has secured authority for such uplinking from a foreign administration, no further international authority from the FCC is required. Nevertheless, DBSC seeks the widest possible scope of authority herein for international services. See also n. 12, supra.

[24] A recent article in Cablevision emphasizes the growing interest among cable companies and programmers in meeting the pent-up demand for foreign language and foreign culture-oriented programming. See "Speaking Their Language", June 6, 1994, p. 39 et seq.

C. Service To The Pacific Rim From 175° W.L.

In an analogous fashion, as Exhibit A hereto demonstrates, DBSC's 175° W.L. spacecraft is visible in eastern portions of China and in Australia, Japan, Korea, the Philippines, Taiwan, Hong Kong, Malaysia, New Zealand and other countries in the Pacific Rim. There are approximately 7.5 million individuals living in the U.S. who are native speakers of Asian languages, and they tend to be well educated with relatively high disposable incomes.

The Commission has, quite rightly, emphasized the importance of providing DBS service to Alaska and Hawaii,[25] and DBSC fully intends to do so. However, such service can only be offered economically from a spacecraft west of approximately 100° W.L. in the western portion of the Region Two arc, and if such service is not supplemented by other revenue streams it becomes a very dubious proposition commercially. The provision of international service from such a spacecraft, therefore, could materially assist DBSC in fulfilling, more completely and more promptly than might otherwise be possible, the affirmative obligation to serve Alaska and Hawaii.

D. International Cooperation

DBSC has held discussions with a number of foreign private sector entities and has discovered a substantial degree of interest in some form of common enterprise, ranging from investment in DBSC, to transponder purchase or lease, to program supply arrangements. DBSC believes that using its 10 spare transponders (5 in each satellite), when limited as proposed herein, would in no way breach treaty obligations of the U.S., or

---

[25] Potential Uses of Certain Orbital Allocations by Operators in The Direct Broadcast Satellite Service, supra, 6 FCC Rcd at 2582.

impair any rights of any foreign administration. As noted previously, DBSC would be willing to have its international authority conditioned on its adherence to the interference criteria to which the U.S. is committed by treaty unless exceptions are agreed to with affected administrations as is permitted by the Region Two Plan. The Commission and DBSC management are well aware of the difficulties and delays which have historically attended efforts of U.S. telecom entrepreneurs to seek cooperative agreements with foreign administrations. Nevertheless, without initial--even if conditional--authority from the U.S. government, the effort to secure "landing rights" or transmission rights from foreign governments or administrations will be stunted at birth. As DBSC conceptualizes the coordination process, it will be the foreign government, not the FCC, which seeks modification to the ITU plan for service to its territory from the DBSC assigned orbital locations of 61.5° W.L. and 175° W.L., to accommodate its use of DBSC's satellites for the provision of domestic (or international) service within its borders. Plan amendments will thus be the burden of the foreign government.

DBSC is not unmindful of the substantial coordination task which lies before it, both in respect to 175° W.L. and for 61.5° W.L. DBSC is also fully aware of the necessity for government-to-government agreements which are an essential element of coordination of any U.S. spacecraft's use of orbit/spectrum resources. DBSC is prepared to abide by substantive and procedural restrictions imposed on it by the Commission as the formal notifying body within the ITU for its current assigment, assuming, of course, that the restrictions are applied equally and simultaneously to any other similarly-situated entity. The

task is admittedly not simple. As things stand, however, existing DBS Plans have been in effect for many years and have stimulated only very limited use of the DBS frequencies throughout the world. Because the Plans contemplate country-by-country modification but no such modifications have so far been negotiated or agreed upon, an extra effort to put the assigned orbit/spectrum resources to work for the benefit both of the U.S. and of other countries now appears justified.

IV. Conclusion

DBSC plans to forge ahead with its domestic DBS plans, with or without a grant of the instant request. It should be manifest, however, that with the additional authority sought herein DBSC will be in a significantly stronger position as a potential entrant and meaningful competitor to the earlier entrenched or soon-to-be entrenched DBS operators.

Because DBSC cannot determine, at this point in its international planning, which foreign interests or administrations will be amenable to local use of U.S. DBS resources or to the idea of a joint U.S. and foreign DBS service, it is premature at this time for DBSC to contemplate any specific technical changes in the two spacecraft already under contract to Martin-Marietta. Accordingly, this application is not accompanied by specific spacecraft modification applications as would normally be the case. Instead, what DBSC seeks at this time from the Commission is a formal indication that, in principle, subject to all necessary concurrences from other countries, the proposal which DBSC has outlined herein is acceptable to the Commission. With such an indication in hand, DBSC believes that it will be able to make faster and more concrete progress in attempting to negotiate specific international arrangements.

WHEREFORE, DBSC respectfully requests that its existing authority be amended to add service to, from, or within foreign points, conditioned on no diminution of DBSC's use of its orbit/spectrum resource allocation for domestic DBS, and on full compliance by DBSC with all relevant treaty or administrative obligations of the U.S.

DBSC waives any claim to the use of any particular frequency or of the electromagnetic spectrum as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise. The undersigned certifies individually and on behalf of DBSC that the statements made in this Application are true, complete, and correct to the best of his knowledge and belief, and are made in good faith.

DBSC certifies that neither it, nor any of its officers or directors, is subject to a denial of federal benefits including FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. section 853(a).

Ownership information relating to DBSC is available in the DBSC ownership file; such information was updated most recently on July 1, 1994. Inquiries concerning this application should be addressed to the undersigned.

Respectfully submitted,

DIRECT BROADCASTING
SATELLITE CORPORATION

By: _____
Harley W. Radin, Chairman
& Chief Executive Officer
(202) 966-5800

William L. Fishman
Sullivan & Worcester
1025 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 775-8190

September 8, 1994

Exhibit A

Direct Broadcasting Satellite Corporation

Approximate Elevation Angles from 61.5 degrees W

City	Latitude	Longitude	Elevation Angle
Lisbon	39 N	9 W	20
London	52 N	0	8.5
Madrid	40.5 N	3 W	15
Milan	45 N	9 E	5
Paris	49 N	2.5 E	8
Rome	42 N	12.5 E	3
Turin	45 N	7.5 E	6
Buenos Aires	34 S	58 W	50
Caracas	10 N	67 W	77
Mexico City	20 N	99 W	42
Rio de Janeiro	22.5 S	43 W	56
Santiago	33 S	71 W	50
Sao Paulo	23 S	47 W	58
Chicago	42 N	87.5 W	35
Miami	26 N	80 W	53
New York	41 N	74 W	41
Washington	39 N	77 W	42

Direct Broadcasting Satellite Corporation

Approximate Elevation Angles from 175 degrees W

City	Latitude	Longitude	Elevation Angle
Canton (Guangzhou)	23 N	113 E	8
Fushun	42 N	124 E	13
Hong Kong	22 N	114 E	9
Manila	15 N	121 E	17
Taipei	25 N	122 E	16
Tokyo	36 N	140 E	27
Seoul	37.5 N	127.5 E	17
Melbourne	38 S	145 E	30
Perth	32 S	116 E	9
Sydney	34 S	151 E	36
Vladivostok	43 N	132 E	18

Visibility from DBSC's Eastern Orbital Position

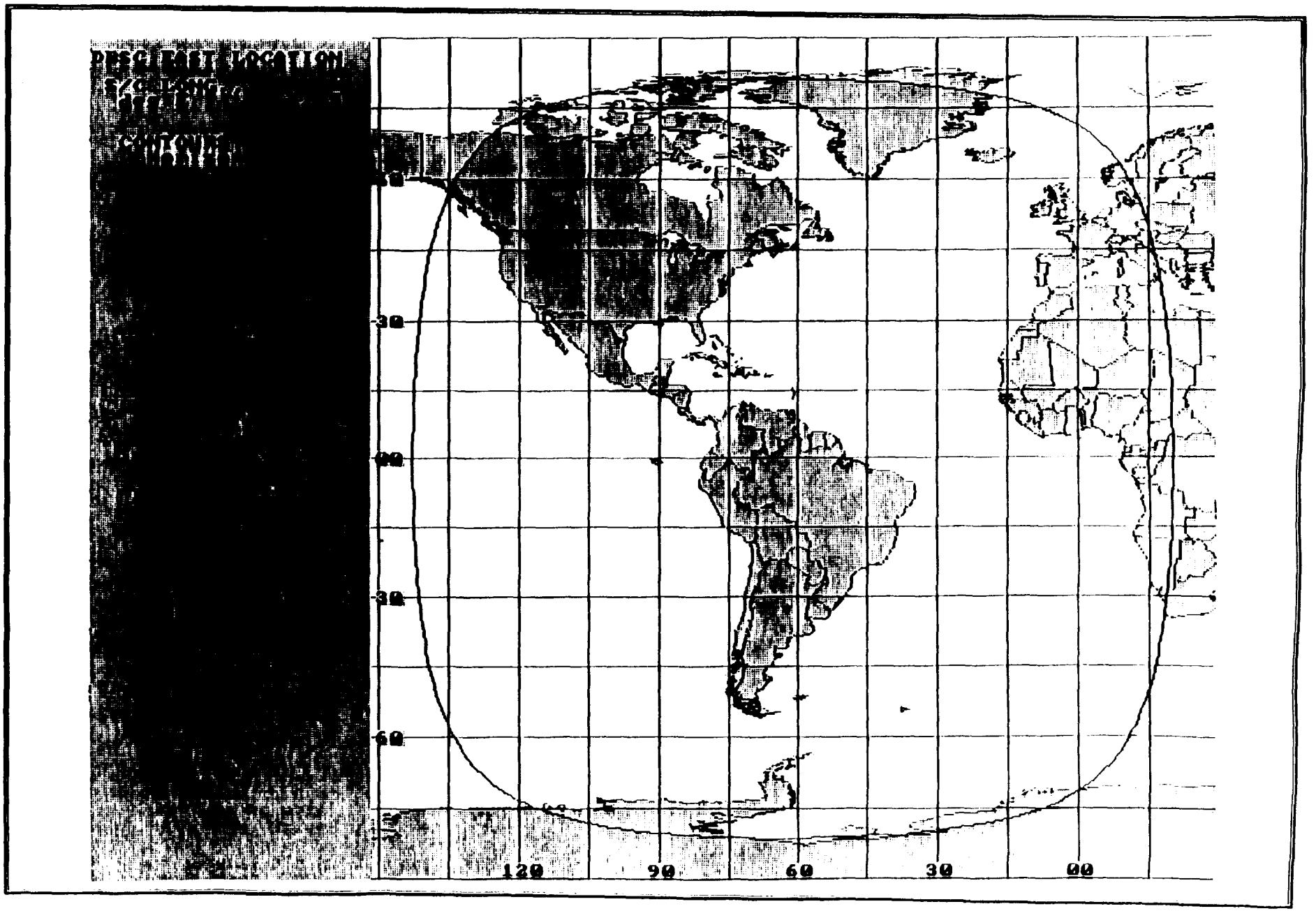

Exhibit A

Visibility from DBSC's Western Orbital Position